

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:13-CV-897

JAMES DILLON, on Behalf of Himself and
All Others Similarly Situated,

Plaintiffs,

vs.

BMO HARRIS BANK, N.A., FOUR
OAKS BANK & TRUST, a North
Carolina-Chartered Bank, GENERATIONS
FEDERAL CREDIT UNION, and BAY CITIES
BANK, a Florida State-Chartered
Bank,

Defendants.

**GENERATIONS COMMUNITY FEDERAL
CREDIT UNION'S REPLY IN SUPPORT OF
ITS RENEWED MOTION TO DISMISS**

Defendant Generations Federal Credit Union ("Generations") files this Reply in Support of Its Renewed Motion to Dismiss.

As set forth in the Renewed Motion to Dismiss, in denying Generations' Motion to Dismiss, the Court identified additional information it believed was necessary before the Motion to Dismiss could be granted. Generations then obtained that evidence—an affidavit authenticating the Loan Agreement between Western Sky Financial and Plaintiff—and has renewed its motion to dismiss.

In opposition, Plaintiff argues that the "issues raised in [the] 'renewed' motion have already been fully and finally decided" and that the order should not be

reconsidered. Docket No. 112 at 2.¹ Plaintiff is mistaken. All that was decided in the Court's Memorandum and Order was that the Loan Agreement had not been authenticated and that because the Loan Agreement had not been authenticated, Generations had not "met [its] burden to establish the existence of an agreement to arbitrate." Docket No. 100 at 1. Generations is not asking the Court to revisit that decision and therefore, the law of the case doctrine does not apply. The Court has not previously decided whether it believes the authenticating declaration to be sufficient to address the Court's concerns and the Court has not previously decided the merits of Generations' Motion to Dismiss.

Plaintiff is also incorrect in his assertion that Generations has failed to meet the standards for seeking reconsideration. Refusing to enforce a valid arbitration clause simply because there had been a question as to authenticity of the arbitration agreement that has now been resolved would work a manifest injustice on Generations. *See, e.g., Gonzalez v. Citigroup, Inc.*, 2011 U.S. Dist. LEXIS 135421 (E.D. Cal. Nov. 22, 2011) (holding that in light of newly-filed evidence "now showing that plaintiff Gonzalez's claims are subject to an arbitration agreement, the court now reconsiders its prior order in order to prevent manifest injustice"). Plaintiff concedes that avoiding manifest injustice is a recognized basis for granting a motion to reconsider.

¹ Docket No. 112 is Plaintiff's response to BMO Harris Bank N.A.'s Renewed Motion to Compel Arbitration, which Plaintiff has adopted and incorporated by reference in response to Generations's Renewed Motion. Docket No. 113.

Finally, as more fully set forth in Defendant BMO Harris Bank, N.A.'s Reply Brief in Support of Its Renewed Motion to Compel Arbitration and to Stay Litigation ("BMO Harris's Reply"), the standards for seeking reconsideration are not applicable in this context. Docket No. 114. "Numerous courts have recognized [that] it is entirely appropriate to file a renewed motion to compel arbitration once an earlier dispute as to the existence of the arbitration agreement has been resolved." Docket No. 114 at 2. To avoid repetitive briefing, Generations adopts and incorporates by reference the arguments made in BMO Harris's Reply on this point as well as the arguments in BMO Harris's Reply regarding the inapplicability of the law of the case doctrine and Generations' having meet the standards for reconsideration.

For the forgoing reasons, as well as the reasons set forth in Generations' Motion to Dismiss and the Renewed Motion, the Court should reconsider its Order and Memorandum denying Generations' Motion to Dismiss and Plaintiffs' claims should be dismissed.

Respectfully Submitted,

/s/ Jonathan R. Reich

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CERTIFICATE OF SERVICE

I certify that on the 23rd day of May, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to the following CM/ECF participants:

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